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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,655	01/11/2001	Takeru Fujii	2001_0019A	8019

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EXAMINER

BROWN, STACY S

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 01/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/757,655

Applicant(s)

FUJII ET AL.

Examiner

Stacy S Brown

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-3 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 1-4 and 9-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Applicant's election of Group I, claims 1-4 and 9-11 with respect to the sequence D-V-K-A-G is acknowledged and entered. Claims 5-8 are withdrawn from consideration being drawn to a non-elected invention.

The following is an explanation of how claims 1-3 will be examined:

- Claim 1 will be examined with respect to the sequence H-D-V-K-A-G-R (SEQ ID NO: 1).
- Claim 2 will be examined with respect to the sequence A1<sup>1</sup>-V-K-A-G-R (SEQ ID NO: 2) wherein A1<sup>1</sup> can either be D or an arbitrary amino acid.
- Claim 3 will be examined with respect to the sequence D-V-K-A- A5<sup>1</sup>-R (SEQ ID NO: 3) wherein A5<sup>1</sup> can be G or an arbitrary amino acid.
- Claim 4 will be examined with respect to the sequence D-V-K-A-G (SEQ ID NO: 4).

### ***Drawings***

2. The drawings submitted January 11, 2001 are objected to by the Draftsperson, see form PTO-948. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

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***Claim Objections***

3. Claims 1-4 and 9-11 contain non-elected subject matter. The claims should be amended to recite only elected material.

Claims 1 and 9 contain grammatical errors. “[C]arboxyl group” and “acid amide group” should be preceded by articles. Claim 9 is not a complete sentence.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-3 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 2-3, “polypeptide residue that an arbitrary amino acid stood in line in N-terminal side from this amino acid” is unclear. Is the arbitrary amino acid part of a larger polypeptide not included in the formula? Is the “polypeptide” referring to the formula’s peptide? Which amino acid is being referred to by “this amino acid”?
- Claim 9, “which macromolecule compound” lacks antecedent basis. It is unclear what the “pharmaceutically acceptable salt thereof” is referring to. What is meant by “functional group” and “medicine”? What are their functions?
- Claim 10, “the carrier” lacks antecedent basis in claim 9. It is unclear what the “pharmaceutically acceptable salt thereof” is referring to.

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- Claim 11, "test medicine" is unclear since there is no therapeutic benefit of a virus agglutination test by itself. Suggested language is "virus agglutination test compound comprising the peptide of any of claims 1-4".

### *Conclusion*

5. No claim is allowed. The following peptides are free of the prior art and are useful for viral agglutination testing:

- H-D-V-K-A-G-R (SEQ ID NO: 1).
- A1<sup>1</sup>-V-K-A-G-R (SEQ ID NO: 2) wherein A1<sup>1</sup> can either be D or an arbitrary amino acid.
- D-V-K-A- A5<sup>1</sup>-R (SEQ ID NO: 3) wherein A5<sup>1</sup> can be G or an arbitrary amino acid.
- D-V-K-A-G (SEQ ID NO: 4).

Papers relating to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 located in Crystal Mall 1. The Fax number for Art Unit 1648 is (703) 308-4426. All Group 1600 Fax machines will be available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stacy S. Brown, whose telephone number is (703) 308-2361. The Examiner can normally be reached on Monday through Friday and alternate Wednesdays from 6:30 AM-4:00 PM, (EST). If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, James C. Housel, can be reached at (703) 308-4027. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Stacy S. Brown  
January 10, 2003



HANKYEL T. PARK, PH.D  
PRIMARY EXAMINER